



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005338

First-tier Tribunal No: PA/55545/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5 June 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

AZR
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not represented
For the Respondent: Mr. P. Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 25 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Hena, (the "Judge"), promulgated on 8 September 2022, in which she allowed the Appellant's appeal on Article 3 grounds. The Appellant is an Iraqi national who had claimed asylum.

2. Permission to appeal was granted by First-tier Tribunal Judge Sills on 14 November 2022 as follows:

"Given the Judge's findings on the Appellant's human rights appeal at paras 36-39, it is arguable that the Judge erred in law in finding that the Appellant did not qualify for humanitarian protection at paras 34-35 and dismissing that ground of appeal. The grounds of challenge are arguable."

3. On 23 November 2022 the Respondent provided a Rule 24 response in which she stated that she did not oppose the Appellant's application for permission to appeal.

"The SSHD accepts that the FTTJ materially erred as set out in the grounds. In concluding that the appellant hailing from Saladin, was unable to obtain a CSID/INID within a reasonable timeframe and would face a real risk of serious harm contrary to Article 3 [39], the FTTJ should have also concluded that the appellant succeeded under Humanitarian Protection. The Tribunal is invited to set aside this conclusion and substitute such an allowed appeal decision under Humanitarian Protection accordingly without a further hearing."

4. The Appellant's representatives contacted the Tribunal by email after the appeal had been listed for oral hearing. They stated:

"We, too, invite the Tribunal to make a new decision, allowing the appeal under Humanitarian Protection, on the papers without the need for a hearing, given the concession by the SSHD.

We would be grateful for urgent confirmation as to the position and whether a face to face hearing will be required."

5. Having considered the Judge's decision and the grounds of appeal, and given that the Appellant had agreed to the remedy proposed by the Respondent, I decided that the Appellant's representatives did not need to attend the hearing.

6. At the hearing I informed Mr. Lawson that the Appellant had agreed with the Respondent's proposed course of action. I stated that I would be allowing the appeal on humanitarian protection grounds as proposed.

Error of law and remaking

7. At [34] and [35] the Judge states:

For a grant of humanitarian protection, a claimant must show substantial grounds for believing that if he returned to the country of return, he would face a real risk of suffering serious harm and that he is unable, or, owing to such risk, unwilling to avail himself of the protection of that country. Serious harm is also defined in paragraph 339C.

Given my findings above I find that the appellant does not qualify for a grant of humanitarian protection.”

8. However, she went on to find at [37] to [39]:

“In relation to the Country Guidance case of SMO and the process for obtaining documentation I cannot see how the appellant would be able to do so. His home area was occupied by ISIS, the level of destruction during occupation and afterwards means on balance it unlikely records would be kept proving his identification. Further to this the appellant left as a child and it is clear he would not be able to provide details to obtain documentation for himself.

Whilst the appellant does have an uncle which he lived with, I do not find that he can find his uncle and that, in fact, his uncle sent him away – which remains a bitter fact for the appellant.

Given the lack of family, the age the appellant left Iraq and the fact that this Country Guidance case does not support, as suggested by the respondent, the appellant can just relocate to a Kurdish area, despite not being from the IKR. With no documentation there is likely to be a breach of Article 3 for the appellant due to treatment at the various checkpoints he would have to pass.”

9. In her Rule 24 response the Respondent made reference to the CPIN Iraq: Internal relocation, civil documentation and returns, July 2022 at [2.6.9]. This states:

“However, those who return to Iraq or the KRI without a CSID or INID, cannot obtain one via a family member on arrival and who would be required to travel internally to a CSA office in another area of Iraq or the IKR to obtain one would be at risk of encountering treatment or conditions which are contrary to paragraphs 339C and 339CA(iii) of the Immigration Rules/Article 3 of the ECHR. In these cases, a grant of Humanitarian Protection is therefore appropriate (unless the person is excluded from such protection).”

10. Accordingly, as accepted by the Respondent, as the Judge found that the Appellant did not have documentation and could not obtain documentation, she should have found that he met the requirements of paragraph 339C.
11. I therefore find that the appeal should also have been allowed on humanitarian protection grounds.

Notice of Decision

1. The decision involves the making of a material error of law at [35]. I set that paragraph aside.
2. I remake the decision allowing the Appellant’s appeal on humanitarian protection grounds.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 May 2023